

1 Rule 4 of the Rules Governing Section 2254 Cases requires the court to make a preliminary
2 review of each petition for writ of habeas corpus. The court must summarily dismiss a petition “[i]f it
3 plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in
4 the district court” Habeas Rule 4; *O’Bremski v. Maass*, 915 F.2d 418, 420 (9th Cir. 1990); *see also*
5 *Hendricks v. Vasquez*, 908 F.2d 490 (9th Cir. 1990).

6 Petitioner expressly commenced this action pursuant to 28 U.S.C. § 2254. However, as
7 discussed in one of petitioner’s other cases before this court, 2:11-cv-01665-KJD-VCF, petitioner is
8 currently awaiting trial on federal criminal charges in this court in case number 2:09-cr-00493-RLH-
9 RJJ.¹

10 Section 2254 applies to persons “in custody pursuant to the judgment of a State court” 28 U.S.C.
11 § 2254(a). Petitioner is not in custody pursuant to a state court judgment, and thus, his petition is not
12 cognizable under § 2254.

13 Even if the court were to construe the petition as arising under 28 U.S.C. § 2241 and as
14 challenging petitioner’s pretrial detention, it plainly appears that petitioner is not entitled to relief. The
15 Rules Governing Section 2254 Cases in the United States District Courts are appropriately applied to
16 proceedings undertaken pursuant to 28 U.S.C. § 2241. Thus, the court conducts the same initial review
17 of the petition even if it arises under 28 U.S.C. § 2241. “The purpose of habeas corpus is to test the
18 legality of detention.” *Arias v. Rogers*, 676 F.2d 1139, 1142 (7th Cir. 1982). Pretrial petitions for habeas
19 corpus “are properly brought under 28 U.S.C.A. § 2241, which applies to persons in custody regardless
20 of whether final judgment has been rendered and regardless of the present status of the case pending
21 against him.” *Dickerson v. Louisiana*, 816 F.2d 220, 224 (5th Cir.), *cert. denied*, 484 U.S. 956 (1987).
22 “It is well settled that in the absence of exceptional circumstances in criminal cases the regular judicial
23 procedure should be followed and habeas corpus should not be granted in advance of trial.” *Jones v.*
24 *Perkins*, 245 U.S. 390, 391-92 (1918). Here, petitioner baldly states that his detention is illegal.

25
26 ¹ The court may take judicial notice of court records. *See United States v. Wilson*, 631 F.2d 118,
119-20 (9th Cir.1980) (stating that judicial notice may be taken of a court’s records in other cases, or
the records of an inferior court in another case).

1 Petitioner states that the Nevada Supreme Court denied him his right to counsel and due process and that
2 his conviction by the Nevada Supreme Court is illegal. As mentioned above, petitioner is detained
3 because of federal, not state, criminal charges. Petitioner's vague, conclusory, and frivolous allegations
4 fail to show that he is entitled to relief under § 2241. Therefore, the court dismisses the petition pursuant
5 to Rule 4 of the Rules Governing Section 2254 Cases because it plainly appears that petitioner is not
6 entitled to relief.

7 **IT IS THEREFORE ORDERED** that petitioner's motion to proceed in forma pauperis (ECF
8 No. 7) is **GRANTED**.

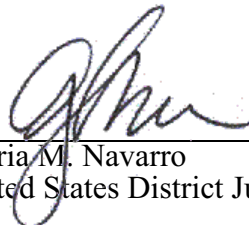
9 **IT IS FURTHER ORDERED** that the clerk shall **FILE** the petition (ECF No. 1-1.)

10 **IT IS FURTHER ORDERED** that the petition (ECF No. 1-1) is **DISMISSED** under Rule 4
11 of the Rules Governing Section 2254 Cases.

12 **IT IS FURTHER ORDERED** that petitioner's motions for the appointment of counsel (ECF
13 Nos. 2, 4) are **DENIED as moot**.

14 **IT IS FURTHER ORDERED** that the clerk **SHALL ENTER JUDGMENT**
15 **ACCORDINGLY**.

16 **DATED** this 2nd day of August, 2012.

17
18 
19 _____
20 Gloria M. Navarro
21 United States District Judge
22
23
24
25
26